

REMARKS:

Claims 33, 34, 35, 37, 38, 39, 41-45 and 47, 48, 50 and 51 are in the case and presented for consideration.

The undersigned thanks Examiner Kifle for the productive telephone interview of January 21, 2009.

During that interview the undersigned indicated his intentions of filing a terminal disclaimer in an effort to avoid the obviousness type double-patenting rejection with respect to U.S. Patent 7,351,701. That terminal disclaimer executed by the undersigned as an authorized attorney for the applicant is attached and acceptance is respectfully requested.

The Examiner has also rejected the claims as being indefinite under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

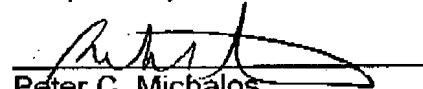
As discussed during the telephone interview and as effected by this amendment, independent claims 33 and 43 have been amended to identify the specifics set of genes which had been laid out in now cancelled claims 40 and 49 respectively. This amendment, in conjunction with the experimental results known to the public and submitted with the amendment of August 27, 2008 is believed to fully define and disclose the invention under 35 U.S.C. 112, second paragraph.

The nature of the defect in the gene that mediates homologous recombination, as disclosed in the specification at page 8, second from the last

full paragraph, may be due to a mutation in or absence of or defective expression of a gene encoding a protein provided in the homologous recombination or HR. This statement in combination with known defects of homologous recombination which have been documented is believed to fully define the invention under 35 U.S.C. 112 so that the claims are now believed to be in proper form for allowance.

The Examiner is respectfully urged to telephone the undersigned if any matters remain which can be treated by telephone interview in the interest of reaching a conclusion to the prosecution of this case.

Respectfully submitted,


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